**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR**
**&**
**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**FRIDAY, THE 22ND SEPTEMBER 2006 / 31ST BHADRA 1928**

**ST.Rev..No. 523 of 2004**
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**TA.350/2002 of DY.COMR.KERALAAGRL.IT & STAT,KOTTAYAM**
**.....**

**REVISION PETITIONER/RESPONDENT/REVENUE:**
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**STATE OF KERALA,**
**REP. BY DEPUTY COMMISSIONER (LAW),**
**COMMERCIAL TAXES, ERNAKULAM.**

**BY GOVERNMENT PLEADER (SHRI V.V. ASOKAN)**

**RESPONDENTS: APPELLANT/ASSESSEE:**
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**M/S. VETTOOR HOTELS,**
**BAR ATTACHED HOTEL, ETTUMANOOR.**

**BY ADV. SRI.V.P.SUKUMAR**

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 22/09/2006 ALONG WITH S.T.REV.NO.548/04, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**C. N. RAMACHANDRAN NAIR &**
**K. M. JOSEPH, JJ.**

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**S.T.REV.NOS. 523 & 548/04**

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**Dated this the 22nd day of September, 2006**

**JUDGMENT**

**C. N. Ramachandran Nair, J.**

Question raised in the S.T.Rev. Cases filed by State is whether the tribunal was justified in acceptance of gross profit declared by the assessee which is 21 per cent. Assessee is a bar hotel engaged in retail sale of liquor. Assessment pertains to 1998 - 99. Accounts were rejected for various grounds including shortage in liquor and excess quantity of soft drinks and soda. Assessing Officer considered the matter on merits and after rejecting Books of Account, fixed the gross profit at 35 per cent and determined sales turnover by adding the gross profit to purchase turnover. In first appeal, though rejection of Books of Account was confirmed, the appellate authority refixed gross profit at 25 per cent. Against the first appellate authority's order, both the Department and assessee went in appeal and tribunal reversed the order of first appellate authority and directed

acceptance of gross profit declared by assessee.

2. After hearing both sides and on going through the order of tribunal, we do not find any fresh material before the tribunal to reverse the order of first appellate authority, particularly when they did not direct acceptance of Books of Account in respect of other transactions, except sale in liquor. Since Accounts were rejected for valid reasons and first appellate authority has reduced the estimation of gross profit at 25 per cent and having regard to the gross profit confirmed in similar cases, both by the tribunal and this Court in other cases coming before us, we feel that first appellate authority's order is just and reasonable. We, therefore, allow the S.T.Rev. Cases.

3. Even though counsel has relied on the decisions of the Madras High Court in B. Ravi v. The State of Tamil Nadu and Another ((1981) 48 STC 274), Vel Metal Industries v. The State of Tamil Nadu ((1988) 68 STC 55) and K. Ramalinga Mudaliar & Co. v. State and Another ((1992) 86 STC 475), we do not

think that the ratio in the said decisions squarely applies to the facts of this case. Following orders in similar cases, we reverse the order of the tribunal in regard to estimation of gross profit and restore the first appellate authority's order, refixing gross profit at 25 per cent.

**C. N. RAMACHANDRAN NAIR, JUDGE**

**K. M. JOSEPH, JUDGE**

**kbk.**